

Decision **DRAFT DECISION OF ALJ THORSON** (Mailed 3/1/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Union Pacific Railroad Company,
Keene Water System (0434W), For Authorization
to Increase Rates and For Interim Rate Relief.

Application 04-11-004
(Filed November 4, 2004)

**OPINION DENYING APPLICANT'S REQUEST
FOR INTERIM RATE RELIEF****Summary**

Union Pacific Railroad Company (Union Pacific), on behalf of its Keene Water System (Keene), has applied for a general rate increase. Union Pacific also seeks an interim rate increase while the underlying rate proceeding is pending. We deny the request for an interim rate increase. Keene has been unable to identify accurately the water users connected to the system. The company admits that a majority of the users do not now pay for the water and no procedures are in place to collect rates from these users. A rate increase should only be granted as part of a more comprehensive final decision addressing individual metering, responsibilities for all parts of the distribution system, customer base, and other water system issues raised by the application and protests.

Background

The Keene Water System was constructed over 100 years ago by the Southern Pacific Railroad (predecessor of Union Pacific) to transport water from

the City of Tehachapi to the communities of Keene and Caliente that had grown up around the railway. The water was used for steam locomotives and by residents. Eventually, the railroad's water use declined but Southern Pacific continued to provide water for the Keene and Caliente residents. Water service to Caliente was discontinued in the 1980s. Application of Union Pacific Company, Keene Water System 3-4 (Nov. 4, 2004).

On May 18, 2000, the Commission commenced an investigation to determine whether Keene is a public utility water system. In April 2002, the Commission issued Decision (D.) 02-04-017 finding that Keene is indeed a public water utility and directing the Commission's Water Division to complete a rate study for the system. In that decision, we characterized the water system as anomalous. D.02-04-017 at 2. The Water Division submitted its rate study on April 17, 2003, finding that existing rates are insufficient to cover the costs of providing service. Water Division, Response to the Request for Interim Rate Relief at 2 (Jan. 21, 2005).

On November 4, 2004, Union Pacific filed its application for a general rate increase for the Keene system. As part of the application, Union Pacific asks that the Commission immediately adopt, as an interim measure, the rates proposed by the Water Division in its April 2003 report. The Water Division, protestant of the application, opposes the interim relief, as do other protestants.

Discussion

Union Pacific is unable to base its interim rate request on Pub. Util. Code § 455.2 since that provision is available only to water corporations having more than 10,000 service connections. Rather, Union Pacific justifies its interim rate increase request by referring to Res. W-4270 that uses a cash flow analysis to

determine whether current rates cover “how much the utility needs to operate and pay bills, including debt service.” *In re Del Oro Water Co., Inc.*, Commission Res. W-4270 at 2. Union Pacific argues that the Water Division’s April 2003 report indicates that current rates are insufficient to cover these costs. The Water Division responds that since Union Pacific’s claimed loss of \$105,450 (test year 2004) for the Keene system represents “about .00032% of the net income of Union Pacific [calculated as \$329 million for the first six months of 2004], there is no diminished-cash flow rationale for interim rates.” Water Division, Response to the Request for Interim Rate Relief at 4.

We do not reach the issue of how interim rates should be determined. We deny the request because the water system, at the moment, is too poorly organized to implement an interim increase. Union Pacific’s application and other pleadings repeatedly document the problems of determining both the water users and water usage beyond master meters serving the Upper and Lower Keene Groups of residents. The applicant indicates that it “does not know the names of the individual users that make-up the Upper and Lower Keene Groups, as it does not have a direct commercial relationship with them.” Union Pacific, Reply to Stonybrook’s Opposition to Motion Regarding Service of Notice of Rate Increase Application at 2 n.5 (Dec. 16, 2004).

In the Scoping Memo, the assigned Commissioner and Administrative Law Judge (ALJ) ordered the company to undertake reasonable efforts to ascertain the identity of water users. Scoping Memo and Ruling of Assigned Commissioner and ALJ at 7 (Jan. 13, 2005). In preparing for a public participation hearing on February 7, 2005, Union Pacific did undertake a title search to determine owners, but more needs to be done to determine current

users. Also, Union Pacific indicates that water payments have not been received from the Lower Keene Group, probably a majority of water users, for years. Application at 16. As part of this proceeding, Union Pacific asks the Commission to conduct workshops with the company and water users to address responsibilities for the distribution system beyond the master meters, as well as basic billing and collection issues. The company itself proposes that individual meters be installed, pursuant to the Water Division's recommendations, before interim rates are effective. Application at 18-19.

As presently constituted, the Keene water system has numerous problems, admitted to by the applicant, concerning the identity of water users, responsibilities for major parts of the distribution system, meter reading, and billing and collection procedures. Under such circumstances, an interim rate increase authorization is likely to be a futile act producing little revenue for the company and aggravating water users who, based on statements at the public participation hearing, have numerous deeply held complaints about the system. All these problems interrelate and they should be addressed in a comprehensive manner in the course of this proceeding. Given these circumstances, an interim rate increase does not satisfy the "just and reasonable" rate requirement of Pub. Util. Code § 451.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and John E. Thorson is the assigned ALJ in this proceeding.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on March 21, 2005, by Union Pacific on

behalf of Keene. Union Pacific asks that the denial of interim rate relief at this time be without prejudice to Keene potentially seeking an interim rate increase at a subsequent date in this proceeding. Union Pacific also asks that any factual determinations made in this decision, based on the limited record at this point in the proceedings, be without prejudice to Keene's ability to contest these determinations later in this proceeding or in other proceedings. We have modified the ordering paragraphs to address both requests.

Findings of Fact

1. On November 4, 2004, Union Pacific filed the pending application for a general rate increase for its Keene water system. As part of the application, Union Pacific asks the Commission to adopt, as an interim measure, the rates proposed by the Water Division in April 2003 report.

2. The Water Division, protestant of the application, opposes the interim relief as do other protestants.

3. Union Pacific justifies its interim rate increase request based on the cash flow analysis set forth in our Resolution W-4270. Union Pacific argues that the Water Division's April 2003 report demonstrates that current rates are insufficient to cover operational costs.

4. As presently constituted, the Keene water system has numerous problems, admitted to by the applicant, concerning the identity of water users, responsibilities for major parts of the distribution system, meter reading, and billing and collection procedures. Under such circumstances, any authorization for an interim rate increase is likely to be a futile act producing little revenue for the company and aggravating water users who, based on statements at the public participation hearing of February 7, 2005, have numerous complaints about the water system.

5. The Keene water system, at the moment, is poorly organized to implement an interim increase.

6. Ratesetting for the Keene water system should be addressed along with the other major financial and service issues facing the system.

Conclusion of Law

Based on the existing organizational and operational condition of the Keene water system, an interim rate increase is neither just nor reasonable.

IT IS ORDERED that:

1. Union Pacific Railroad Company's (Union Pacific) request for an interim rate increase at this time is denied.

2. Union Pacific may renew its request later in this proceeding if factual or legal circumstances have changed, and Union Pacific and other parties may offer evidence and argument at that time.

This order is effective today.

Dated _____, at San Francisco, California.